

IN THE
SUPREME COURT OF THE UNITED STATES
WINTER TERM, 1975

Supreme Court, U. S.
FILED

DEC 27 1975

JOHN H. HARVEY, CLERK

No. 75-822

EDDIE THOMPSON, JR.,
Petitioner,

vs.

KENTON COUNTY BOARD OF
ELECTION COMMISSION, ET AL.,
Respondents.

MOTION TO DISMISS

RICHARD S. NELSON
Atty. for Respondent,
James Simpson
11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

I certify that a copy of the foregoing motion has been
served by the United States mail upon:

Petitioner:

Mr. Eddie Thompson, Jr.
736 Highland Avenue
Covington, Kentucky 41011

Respondents:

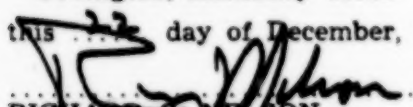
Hon. Joseph T. Condit
28 West Fifth Street
Covington, Kentucky 41011
Hon. John R. Elfers
City-County Building
Covington, Kentucky 41011
Mr. William Martin
242 East Robbins Street
Covington, Kentucky 41011

Hon. Robert E. Ruberg
P.O. Box 187, 600 Greenup Street
Covington, Kentucky 41012
Hon. Philip Taliaferro
1 West Sixth Street
Covington, Kentucky 41011

Circuit Court:

Judge Daniel J. Goodenough
Third Division, Kenton Circuit Court
City-County Building
Covington, Kentucky 41011

this 22 day of December, 1975.


RICHARD S. NELSON
Attorney for Respondent, Simpson

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Comes now the Respondent, James Simpson, through counsel, pursuant to Rule 16 (1) (a) of the Revised Rules of the Supreme Court of the United States, and states as follows:

1) Petitioner's action was dismissed by the Hon. Judge Daniel Goodenough of the Kenton Circuit Court of the State of Kentucky, Case Number 28573, by Order dated June 27, 1975. Basis for his holding was K.R.S. 118.105 (4), which shows a lack of any statute permitting the contest of a primary commissioner's election in a city of the second class with the city-manager form of government. His decision was unanimously affirmed in an opinion handed down by the Kentucky Court of Appeals, Case Number 75-613, rendered September 19, 1975. Rehearing was denied by that court on October 29, 1975.

2) Petitioner seeks review by this court pursuant to 28 USC 1257 (2), while the facts as presented do not justify potential jurisdiction under that section. Petitioner's real issue is a lack of state statutory authority to contest such an election, while 28 U.S.C. 1257 (2) refers only to a state statute being upheld which is repugnant to the U.S. Constitution. Furthermore, respondent respectfully submits that petitioner's original notice of appeal, filed October 7, 1975, failed to comply with Rule 13 (2), Rule 23 (1) (b) (iii) and Rule 15 (1) (b) (i) by citing a non-existent statute; and that said notice of appeal was filed prior to becoming a final judgment as is required for review. For all the above reasons, petitioner's request for certiorari under 28 USC 2103 should also be denied.

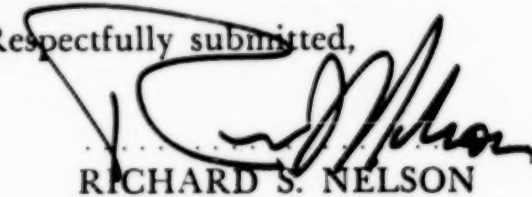
3) Assuming Petitioner has raised a valid constitutional question, which assumption this Respondent expressly denies, it is most strenuously suggested that the Petitioner has failed to state a cause of action against this Respondent or a cause of action for which relief can be granted from this Respondent.

4) It is respectfully submitted that this Respondent was not a candidate in the election in question and has never had any relief requested of him throughout this entire proceeding. In such a case where relief is neither requested nor existent, this Respondent maintains that it is extremely unjust for a party in his position to incur the additional expenses necessary for further pleadings in this Court, such as for printed copies and other costs to be incurred.

WHEREFORE, Respondent requests:

- 1) That the Petition for Appeal and Certiorari be denied.
- 2) That Respondent, Simpson, be dismissed as a party or as a purported party to this action.
- 3) For all other proper relief.

Respectfully submitted,



RICHARD S. NELSON

Attorney for Respondent, Simpson

11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

COUNSEL OF RECORD

Pursuant to Rule 39 (2), below are listed the printed names of counsel of record:

Petitioner:

Mr. Eddie Thompson, Jr.
736 Highland Avenue
Covington, Kentucky 41011

Respondents:

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